went again with his wife to see the third defendant. Without removing the bandage, the third defendant applied some medicine on his arm over the bandage and he was told to come back again the next day. On the fourth day the plaintiff discovered blood oozing out from underneath the bandage. He also saw what he described as "bubbles" on his left hand. He went with his wife to see the third defendant. He showed the third defendant the blood and the "bubbles" whereupon the third defendant told him to go to the General Hospital at once. The third defendant called a taxi and the plaintiff and his wife proceeded immediately to the General Hospital. At the General Hospital the plaintiff was examined and warded and on the same day his left arm was amputated. These then were the findings of fact made by the learned trial judge and we have no reason to disagree with him.

Counsel for the third defendant submitted before us that the third defendant was not a qualified medical practitioner and that therefore the standard of care and skill to be expected from him was not as high as the standard to be expected from a qualified medical practitioner. In the circumstances of this case we do not find it necessary to deal with the question as to the standard of care and skill to be expected from a Chinese physician as compared with a qualified medical practitioner. Even if it is assumed in favour of the third defendant that the standard of care and skill to be expected from him was not as high as that to be expected from a qualified medical practitioner we are of the opinion that he was guilty of a high degree of negligence in his treatment of the plaintiff's left arm. We refer particularly to the very tight bandage applied to the plaintiff's arm and to the failure of the third defendant to remove the bandage in order to inspect the arm when the plaintiff complained of severe pain. In fact the bandage was never removed by the third defendant after he had applied it to the plaintiff's arm. On the fourth visit made by the plaintiff to the third defendant when the plaintiff discovered blood oozing out from underneath the bandage and saw "bubbles" on his left hand it was obviously too late for the third defendant to do anything because he sent the plaintiff to the General Hospital immediately.

As to the gangrenous state of the plaintiff's arm, Mr. William Fung, the senior orthopaedic surgeon at the General Hospital, explained that gangrene is caused by the loss of blood supply and that in this case there were the following three possibilities: —

1. The injury to the left arm may have severed the blood vessels and thus stopped the supply of blood resulting in gangrene.
2. Some infection may have blocked the blood supply.
3. A tight bandage can also cause gangrene.

The learned trial judge dealt with the question of the cause of the gangrene in the following words: —

"The third defendant has described the plaintiff's injury as a twisted arm and he alleges that there were lacerations on the arm. The plaintiff denies the third defendant's allegation of his arm being lacerated. The plaintiff's evidence is that there were no lacerations, abrasions or cuts on his left arm and there was no bleeding. I accept the plaintiff's evidence on this issue. In the circumstances the possibility of any blood vessels being severed or occluded can in my opinion be completely ruled out. The possibility of infection setting in and leading to gangrene can also be excluded because there was no breaking of the skin. On the other hand the plaintiff has testified that the bandage on his arm was tight and this in my opinion resulted in the blood supply to the arm being cut off or impeded. The evidence therefore clearly shows that the gangrene which caused the arm being amputated was a result of the third defendant's incompetent treatment."

We are in complete agreement with the reasoning of the learned trial judge and affirm his decision that the loss of the plaintiff's left arm was caused by the negligent treatment given to it by the third defendant.

On the question of damages, we agree with the learned trial judge's assessment of $2,000 for loss of earnings. The plaintiff was a daily paid casual labourer and was 38 years of age at the time of the accident. In our opinion, the sum of $25,000 awarded by way of general damages is excessive. We are of the view that the sum of $17,500 would be a fair amount to be awarded in this case for general damages. The total amount of damages will therefore be reduced from $28,070 to $20,570.

The appeal by the third defendant against liability is dismissed but the award of damages is varied accordingly.

Appeal against liability dismissed.
Award of damages varied.

Solicitors: *R. E. Redrup; C. H. Chua & Co.*

SOFJAN & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Tan Ah Tah and Winslow JJ.) October 10, 1970]

[Singapore — Case Stated No. 1 of 1970]

Criminal Law and Procedure — Appeal — Order made by district judge under section 11(2) of the Control of Imports and Exports Ordinance (Cap. 214) — Whether criminal case or matter — Whether appeal lies — Criminal Procedure Code (Cap. 132) ss. 284 and 290(1).

Import and Export — Gold bars — Forfeiture — Control of Imports and Exports Ordinance (Cap. 214), s. 11(2).

This was a case stated under section 60(1) of the Supreme Court of Judicature Act, 1969. Certain gold bars had been seized at the Singapore Airport in April and May 1969 and when the seizures were reported to the district court under the provisions of section 11(2) of the Control of Imports and Exports Ordinance, the district court, being satisfied that an offence under the provisions of the Ordinance had been committed by some person or persons, held that no sufficient cause had been shown by the appellants why an order for forfeiture of the gold bars should not be made and the gold bars were accordingly forfeited. The appellants who had claimed to be the owners or persons having an interest in the gold bars, appealed against the order of forfeiture to the High Court. Chua J. in the High Court decided that the matter was not a criminal case or matter and that accordingly no appeal lay to the High Court. At the request of counsel for the appellants he stated a case for the opinion of the Court of Criminal Appeal.

Held: the learned judge was right in holding that this was not a criminal case or matter and therefore no appeal lay against the order of forfeiture.

Cases referred to:-

(1) *R.* v. *West Kent Quarter Sessions Appeal Committee* [1951] 2 All E.R. 728 at p. 730.

(2) *Seaman* v. *Burley* [1896] 2 Q.B. 344.

(3) *Amand* v. *Home Secretary & Anor.* [1943] A.C. 147.

(4) *Queen* v. *Justices of Central Criminal Court* [1887] 18 Q.B.D. 314.

COURT OF CRIMINAL APPEARL.

K. C. Chan for the first appellant.

Ng Kian Fong for the second appellant.

S. Rajendran (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Winslow J. (delivering the judgment of the court): This is a case stated by Chua J. arising out of an appeal by the appellants who appeared by their advocates before the Criminal District Court as persons claiming to be owners or persons having an interest in certain gold bars which had been seized at the Singapore Airport in April and May 1969 and whose seizure had been reported to the district court under the provisions of section 11(2) of the Control of Imports and Exports Ordinance (Cap. 214) within one month of such seizure. The district court, being satisfied that an offence under the provisions of the Ordinance had been committed by some person or persons, held that no sufficient cause had been shown by the appellants why an order for forfeiture of the gold bars should not be made and the gold bars were accordingly forfeited.

When the matter came before Chua J. counsel on behalf of the Public Prosecutor objected to the appeal on the ground that this was not a criminal case or matter in respect of which an appeal lay from the decision of the district court to the High Court. After hearing all counsel concerned on 24th and 25th August, 1970, Chua J. decided on 28th August that this was not a criminal case or matter and that accordingly no appeals lay therefrom to the High Court and the appeals were dismissed. Counsel for the appellants prevailed upon the learned appeal judge to state a case under section 60(1) of the Supreme Court of Judicature Act, 1969 and a case has accordingly been stated to us for our decision as to whether his determination was correct in point of law and what should be done in the premises.

It may be useful at this stage to set out the provisions of section 11 of the Control of Imports and Exports Ordinance (Cap. 214) as follows: —

"11.(1) The Court before which any person is tried for an offence may, whether a conviction is had or not, order the forfeiture of any goods produced before it or seized under this Ordinance in connection with the offence for which such person is tried in respect of which it is satisfied that an offence has been committed.

(2) When any goods have been seized under the provisions of this Ordinance, the controller shall, within a period of one month from the date of such seizure, unless a prosecution has before the expiry of such period been commenced and is pending against any person for an offence in respect of the property so seized, report the fact of such seizure to a district court having criminal jurisdiction and such court may, if satisfied that an offence has been committed in respect of such goods, order the same to be forfeited:

Provided that no order shall be made under this section to the prejudice of any person claiming to be the owner of, or to have an interest in, such goods, unless such person has had an opportunity of being heard, either personally or by advocate, by such court, to show cause why such order should not be made."

In response to a notice issued by the district court to any person claiming to be the owner of or to have an interest in the said gold bars to appear either personally or by advocate on a day stated therein to show cause why an order of forfeiture should not be made, the appellants appeared on that day before the district court through their advocates.

The procedure laid down by this subsection (2) was followed in every respect by the district court concerned and the appellants were given an opportunity of being heard by their advocates to show cause why an order of forfeiture should not be made and after hearing them the district court made the order for forfeiture. It should be noted that before making the order for forfeiture the court had to be satisfied that an offence under the Ordinance had been committed in respect of such gold bars and the district court was so satisfied.

Counsel for the appellants contended that because the court was a court exercising criminal jurisdiction and because it had to be satisfied that an offence had been committed under the Ordinance, this was a criminal case or matter giving rise to a right of appeal under the Criminal Procedure Code (Cap. 132).

Section 11 confers power to make an order of forfeiture at the conclusion of the trial of any person for an offence under the Ordinance whether that person is convicted or otherwise. Subsection (2) however contemplates a case where no prosecution has been instituted and provides an expeditious method of getting the matter before a district court having criminal jurisdiction within a period of one month from the date of the original seizure so that an order for forfeiture may be made after giving an owner or interested person an opportunity of showing cause why the order should not be made. It was contended on behalf of the appellants that had a prosecution been instituted against someone in respect of these gold bars, then, regardless of whether a conviction was obtained or not the person tried would have had a right of appeal against an order of forfeiture made and that accordingly it was anomalous that, merely because no one was prosecuted, claimants such as the present appellants should not have a right of appeal under the Criminal Procedure Code. This argument presupposes that a person tried for an offence under the Ordinance has a right of appeal against an order for forfeiture under the Criminal Procedure Code. A careful reading of the proviso makes it clear however that it prescribes the procedure to be followed before an order for forfeiture can be made not only with regard to cases falling within subsection (2) but also with regard to cases falling within subsection (1), *i.e.*, cases where a prosecution has taken place, whether it results in a conviction or otherwise.

Section 284 of the Criminal Procedure Code provides as follows:

"No appeal shall lie from a judgment, sentence, or order of a criminal court except as provided for by this Code or by any other law for the time being in force".

As Chua J. said in his judgment, the critical section is section 290(1), the relevant portion of which reads:

"... any person who is dissatisfied with any judgment, sentence or order pronounced by any district court or magistrate's court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against such a judgment, sentence or order..."

The question is whether the order made by the district court after an inquiry under section 11(2) of the Ordinance was an order pronounced by a district court in a criminal case or matter to which the appellants were parties within the meaning of section 290(1) of the Criminal Procedure Code so as to confer a right of appeal to the appellants thereunder since the Ordinance itself confers no right of appeal against an order for forfeiture thereunder.

As Lord Goddard said in *R.* v. *West Kent Quarter Sessions Appeal Committee*: [1]

"It is most elementary that no appeal from a court lies to any court unless there is a statutory provision which gives a right to appeal. The decision of every court is final if it has jurisdiction unless an appeal is given by statute".

It is clear that the Control of Imports and Exports Ordinance does not confer any right of appeal and it was accordingly incumbent on the appellants to establish that a right of appeal was conferred by the sections of the Criminal Procedure Code to which we have referred.

A number of cases were cited to us on the question of what is a criminal case or matter. In *Seaman* v. *Burley*[2] Lord Esher felt that "the question is really one of procedure. The question is whether the proceeding which was going on was a criminal cause or matter". He then held that when the proceeding is one which may end in the imprisonment of a person in default it must be considered a criminal proceeding. This case was cited with approval in *Amand* v. *Home Secretary and Minister of Defence of Royal Netherlands Government*[3] where Lord Wright said:

"The principle which I deduce from the authorities I have cited and the other relevant authorities which I have considered, is that if the cause or matter is one which, if carried to its conclusion, might result in the conviction of the person charged and in a sentence of some punishment such as imprisonment or fine, it is a 'criminal cause or matter'."

We are of the view that the proceedings before the district court in this case were not criminal in their nature and in their form nor did the proceedings contemplate anything other than the forfeiture of the gold bars in question. The question of the conviction or the punishment of the appellants or in fact anyone else was not then in contemplation. The appellants were never placed in jeopardy of being punished for any offence during those proceedings. Although the court concerned was a court exercising criminal jurisdiction and although the court had to be satisfied that an offence under the Ordinance had been committed before making an order for forfeiture we are satisfied that, despite the presence of these elements, which are some of the elements which are present in criminal proceedings generally, a most vital element was lacking, namely, that no one was ever liable to be convicted or sentenced to punishment such as imprisonment or fine and that the proceedings were accordingly not criminal. In our judgment, the inquiry before the district court was not a criminal case or matter giving rise to a right of appeal under section 290(1) of the Criminal Procedure Code.

It seems clear to us that under section 11 of the Control of Imports and Exports Ordinance no order for forfeiture can be made, whether at the end of the trial of any person for an offence under the Ordinance, or after an inquiry under subsection (2) to the prejudice of any person claiming to be the owner of or to have an interest in such goods unless such person has been given an opportunity of being heard either personally or by advocate to show cause why such order should not be made. Any order for forfeiture whether at the end of a trial or after an inquiry under subsection (2) would not give rise to a right of appeal under section 290 of the Criminal Procedure Code. If it had been intended that an order of forfeiture should be appealable then the legislature would have made special provision for a right of appeal in such cases. The Ordinance is silent on this point. It does not provide as the Dangerous Drugs Ordinance (Cap. 137) did in fact provide, before 1959, that the owner of a conveyance forfeited under section 30 of that Ordinance should be deemed to be a party to a criminal case within the meaning of section 290 of the Criminal Procedure Code. If it had been the intention of the legislature to give a right of appeal in such cases then section 11 would have provided that the owner or person having an interest in goods forfeited under section 11 should be deemed to be party to a criminal case within the meaning of section 290 of the Criminal Procedure Code.

In conclusion we would refer to the case of *The Queen* v. *Justices of Central Criminal Court*[4] which was cited to us by counsel for the first appellant. It was held in that case that an order for restitution of proceeds of property made at the conclusion of the trial of a prisoner convicted for obtaining by false pretences by the criminal court having jurisdiction to try him was an order made in a criminal cause or matter. It was argued that the order was made in a civil cause or matter but this argument failed as it was held that the order was made by the court which tried the convict and section 100 of the Larceny Act empowered such court to order restitution in a summary manner.

We do not consider that this authority is of any assistance to the appellants since the order for forfeiture herein was not made after the conviction of anyone for an offence under the Ordinance nor, even if there had been a prosecution resulting in the conviction of someone, could the district court have made any order for forfeiture without complying with the provisions of the proviso to section 11. What the Larceny Act empowered the court to do in the case cited was merely what section 430 of the Criminal Procedure Code empowers a criminal court to do at the conclusion of a criminal trial in Singapore. Section 11 of the Ordinance confers different powers on the district court holding an inquiry thereunder.

In our judgment therefore the answer to the question raised in the case stated by Chua J. is in the

affirmative namely, that his determination was correct in point of law and that the appeals were correctly dismissed.

Order accordingly.

Solicitor: *Ng Kian Fong.*

TEO CHENG LEONG v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Tan Ah Tah and Chua JJ.) October 21, 1970]

[Singapore — Criminal Appeal No. 4 of 1970]

Criminal Law and Procedure — Abolition of trial by jury — Whether person who has been committed for trial before coming into force of amendment abolishing trial by jury had an accrued right to trial by jury — Assizes — Criminal Procedure Code (Cap. 132), ss. 147 and 179 — Criminal Procedure Code (Amendment) Act, 1969 — Courts of Judicature Act 1964, ss. 19 and 20.

Criminal Law and Procedure — Commencement of trial — When begins.

Criminal Law and Procedure — Trial — Capital offence — Defence counsel assistance scheme — Benefit of representation.

The appellant had been arrested and charged under section 4 of the Arms Offences Ordinance with using a firearm. He was brought before a magistrate's court and a preliminary inquiry held in the 9th magistrate's court on June 20, 21 and 26, 1969. The magistrate's court sent the record of proceedings to the registrar of the High Court who received it on September 26, 1969. As the appellant was not legally represented at the preliminary inquiry, the deputy registrar, because the appellant was facing a capital charge, on September 29, 1969 assigned an advocate and solicitor to represent him at the trial. The advocate and solicitor accepted the assignment on October 9, 1969. An effort was made to fix a date for trial on December 9, 1969 but no date was fixed. On December 30, 1969 the deputy registrar fixed the period February 17 to 23, 1970 as the dates for the trial of the appellant. On January 5, 1970 the Criminal Procedure Code (Amendment) Act, 1969 came into operation and this repealed the whole of the Chapter dealing with trials before the High Court with a jury and deleted all references to juries in the Criminal Procedure Code. The appellant was therefore tried before two judges of the High Court and he was found guilty and sentenced to death. On the appeal it was contended *inter alia* (1) the only forum for trial of a person committed at a preliminary inquiry is "the next ensuing assizes or the one to which such assizes may postpone the trial and none other". The non-compliance with the provisions of section 179 of the Criminal Procedure Code in this case constituted an incurable illegality because the tribunal which finally tried the appellant had in fact no jurisdiction to try him; (2) there was a miscarriage of justice in this case in that by reason of the unlawful delays in bringing the appellant to trial the appellant was deprived of a trial by jury; (a) there was a miscarriage of justice in that the appellant was tried by a tribunal which had no jurisdiction to try him at the time of his trial.

Held, dismissing the appeal: (1) the statutory requirement to name as "assizes" sessions of the High Court for the despatch of its original criminal business was abolished by the Courts of Judicature Act, 1964 and in so far as the provisions of section 179 of the Criminal Procedure Code are inconsistent or conflict with the provisions of sections 19 and 20 of the Courts of Judicature Act, 1964 the provisions of the Act must prevail;

(2) in any event, the provisions of section 179 of the Criminal Procedure Code are not mandatory and are merely directory and are intended to provide for as speedy a trial as possible in the High Court of accused persons, whose cases the Public Prosecutor has designated should be placed for trial before the High Court;

(3) in this case there was no delay on the part of anyone concerned in bringing the case against the appellant before the High Court for trial and there was accordingly no disregard of the provisions of section 147(1) of the Criminal Procedure Code, no irregularity and no miscarriage of justice;

(4) in enacting the Criminal Procedure Code (Amendment) Act, 1969 the legislature had clearly manifested its clear intention to take away any right an accused person had acquired or accrued to him to a trial by jury when the repealing enactment came into operation;

(5) in this case as the trial of the appellant had not commenced before the High Court before the coming into operation of the Criminal Procedure Code (Amendment) Act, 1969 the appellant did not have an accrued right to be tried by a jury at the time of the coming into operation of the Act;

(6) on the facts the appellant was rightly convicted of the offence charged against him and there was no sufficient ground or reason for interfering with the sentence imposed by the trial court.

Cases referred to:-

(1) *Colonial Sugar Refining Co.* v. *Irving* [1905] A.C. 369.
(2) *State* v. *P.K. Swamy & Anor.* A.I.R. 1953 Madras 451.
(3) *Venugopala* v. *Krishnaswami* [1943-4] F.C.R. 39.
(4) *Srinivasachari* v. *The Queen* I.L.R. 6 Mad. 336.
(5) *Emperor* v. *Fitzmaurice* I.L.R. 6 Lah. 262.
(6) *Shreekant Pandurang* v. *Emperor* A.I.R. 1943 Bom. 169.
(7) *Ram Singh* v. *The Crown* A.I.R. 1950 E.P. 25.
(8) *Chari* v. *The State* A.I.R. 1959 All. 149.

COURT OF CRIMINAL APPEAL.

David Marshall (*J. B. Jeyaretnam* with him) for the appellant.

Tan Boon Teik (Attorney-General and Public Prosecutor) (*S. Rajendran* Deputy Public Prosecutor with him) in person.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal by the appellant, Teo Cheng Leong, against his conviction and sentence by the High Court consisting of Winslow J. the presiding judge, and Kulasekaram J. on a charge of using a firearm under section 4 of the Arms Offences Ordinance (Cap. 112) which provides that "Any person who uses or attempts to use any arm shall on conviction be punished with death or imprisonment for life." The appellant was sentenced to death.

The first ground of appeal is that there was a miscarriage of justice in that "The appellant having been committed for trial on the 26th June 1969 (at the end of a preliminary inquiry) was not tried, as required by the law in force throughout 1969, 'at the Assizes next ensuing after such committal" but was in fact tried several Assizes and many months later — on the 17th February 1970."

The facts which led to the appellant being committed for trial before the High Court are not in dispute. On 26th March 1969 at about 2.50 p.m. the appellant and three others, armed with two revolvers and two daggers, entered a two-storey terraced house, No. 492 Sims Avenue, and robbed the occupants. They then left through the back door of the premises but a hue and cry was raised and the appellant, after a chase, was arrested in a hut off Lorong 39 where he had taken refuge. At the time of his arrest he was in possession of a revolver from which he had, just before his arrest.